

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

ORDER

Movant pled guilty to a one-count information on February 18, 2004, before Magistrate Judge James C. England. A sentencing hearing was held on July 8 2004, before this Court, and judgment entered that date. Thereafter, on August 18, 2004, petitioner filed a motion for leave to appeal (Doc. #27). That motion was denied by Court order (Doc. #30) for defendant's failure to show excusable neglect or good cause pursuant to Federal Rules of Appellate Procedure 4(b)(4). Defendant appealed to the Eighth Circuit Court of Appeals which affirmed this Court's judgment on July 15, 2005, and denied defendant's the right to file his appeal out of time. The Eighth Circuit further stated that even if defendant's challenge to the sentence was considered on its merits, it would be denied because there was no violation of Blakely v. Washington, 124 S.Ct. 2531 (2004).

Now before this Court is movant's motion to vacate, correct or set aside judgment and sentence (Doc. #1), filed May 6, 2005; the government's response (Doc. #4, filed June 23, 2005); the government's supplemental response (Doc. #5, filed July 15, 2005) and the movant's response to the government's supplemental response (Doc. #6, filed July 24, 2005).

Upon review of the pending motion and responses, the Court concludes that the issues raised by movant are not supported by either the record or prevailing legal authority. Accordingly, movant's motion to vacate, correct or set aside judgment and sentence pursuant to 28 U.S.C. Sec. 2255 is denied.

/s/Fernando J. Gaitan, Jr.
Fernando J. Gaitan, Jr.
United States District Judge

Dated: September 7, 2005